

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

HERTZ INTERNATIONAL, LTD.

Claim No. CU -1899

Decision No. CU

3361

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for claimant:

Matthew L. Lifflander, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$324,645.75 was presented by HERTZ INTERNATIONAL, LTD., based upon the loss resulting from the intervention of claimant's subsidiary in Cuba by the Government of Cuba and for debts owed to claimant by this subsidiary.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term "property" means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

The record shows that claimant was organized under the laws of Delaware and that prior to May 19, 1966, claimant was known as Hertz American Express International, Ltd. An officer of claimant has certified that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. According to statements from other officers of claimant, all of claimant's outstanding capital stock was owned by The Hertz Corporation and the American Express Company. Affidavits from officers of these two corporations indicate that The Hertz Corporation, organized under the laws of Delaware, had about 3,000,000 shares of outstanding capital stock of which about 50,000 shares were held by nonnationals of the United States, and that the outstanding capital stock of American Express Company, organized under the laws of New York, was owned "far in extent of ninety per cent" by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record includes affidavits from officers of claimant and a former accountant for the Cuban corporation, Alquiler de Autos, Cubacarros, S.A. (hereafter referred to as AAC or the Cuban subsidiary);

shares of stock of AAC; audited balance sheets and profit and loss statements for AAC as of December 31, 1959, August 31, 1960, and December 31, 1960; balance sheet and profit and loss statement as of December 31, 1957 for Sistema de Arrendamiento de Autos, Couture Nacional de Cuba, S.A., also a Cuban corporation which was the former sole owner of AAC; copies of invoices from claimant to its subsidiary for the year 1958.

The record further includes copies of claimant's records indicating its investment in AAC pursuant to its purchase on April 30, 1958 of AAC's parent corporation for \$74,654.65; copies of claimant's balance sheets as of November 30, 1960 and December 31, 1960 accompanied by schedules of its investments in subsidiaries including AAC; and copies of pertinent parts of claimant's 1960 income tax return indicating asserted deductions for losses with respect to its Cuban subsidiary.

Based upon all the evidence of record, the Commission finds that claimant became the sole owner of all the outstanding capital stock of AAC by virtue of purchasing AAC's parent corporation which owned all the outstanding capital stock of AAC.

Mr. Carlos O. Godoy, former accountant for AAC, has signed an affidavit stating that he was personally present at the offices of AAC on June 15, 1963 when an inspector from the Cuban Ministry of Labor appeared and announced that the Ministry of Labor had decreed intervention of AAC, and that all of the assets of AAC therefore belonged to the Government of Cuba. Mr. Godoy further attested to the fact that a few days later the Ministry of Labor caused an inventory to be made of all the assets of AAC, that all the books and records of AAC were confiscated, that the offices of AAC were closed and all of its employees were dismissed.

The Commission finds, on the basis of the foregoing evidence, that claimant's wholly-owned Cuban subsidiary, AAC, was intervened by the Government of Cuba on June 15, 1963.

Claimant asserts a loss of its investment of \$74,654.65, representing its original cost of all the outstanding shares of stock of AAC. The balance sheets submitted in support of this claim disclose that: (a) as of December 31, 1957, the parent of AAC had a deficit of \$126,124.00, and a net loss for 1957 in the amount of \$45,209.00; (b) as of December 31, 1959, AAC had a deficit of \$141,375.00, and a net profit of \$8,014.02 for 1959; (c) as of August 31, 1960, AAC had a deficit of \$142,348.43, and a net profit of \$973.43 for the eight months ending August 31, 1960; and (d) as of December 31, 1960, AAC had a deficit of \$140,474.62, and a net profit of \$900.38 for 1960.

It further appears from the said affidavit of Mr. Carlos O. Godoy that AAC was experiencing difficulties in maintaining its fleet of cars for rental purposes because spare parts were not available generally and permission to purchase them was denied by the Government of Cuba. Consequently, states Mr. Godoy, AAC dismantled some of its vehicles to keep others in operation until September 1962 when the last rental was effected. The record clearly shows that conditions did not improve thereafter and on June 15, 1963 when AAC was intervened by Cuba, AAC had no net worth.

The Commission therefore concludes that claimant did not suffer a loss within the meaning of Title V of the Act based upon the net worth of AAC as a result of the intervention by the Government of Cuba.

Accordingly, the portion of the claim based upon sole ownership of AAC by claimant is denied. (See Claim of The Goodyear Tire & Rubber Company, Claim No. CU-0887.)

However, the Commission finds on the basis of the evidence of record that AAC was indebted to claimant in the amount of \$249,991.10, and concludes that claimant suffered a loss in that amount within the meaning of Title V of the Act as a result of the intervention of AAC by the Government of Cuba

on June 15, 1963. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 (July-Dec. 1966), and the Claim of The Goodyear Tire & Rubber Company (*supra*).)

The fact that AAC apparently had no net worth at the time of intervention does not preclude making a certification of loss.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that HERTZ INTERNATIONAL, LTD., sustained a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Hundred Forty-nine Thousand Nine Hundred Ninety-one Dollars and Ten Cents (\$249,991.10) with interest thereon at 6% per annum from June 15, 1963 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

DEC 11 1968

Leonard v. B. Aultton
~~Leonard v. B. Aultton, Chairman~~
Theodore Jaffe
Theodore Jaffe, Commissioner
Sidney Feidberg
~~Sidney Feidberg, Secretary~~

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)